



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ken Martin
Chair
Minnesota Democratic Farmer Labor Party
255 East Plato Blvd.
St. Paul, MN 55107

MAY 14 2014

RE: MUR 6642
Christopher Kauffman

Dear Mr. Martin:

This is in reference to the complaint you filed with the Federal Election Commission on September 18, 2012. Based on that complaint, on June 25, 2013, the Commission found reason to believe that Unknown Respondents violated 2 U.S.C. §§ 441d(a) and 434(b)(4)(H)(iii), (c)(1), and/or (g) and authorized an investigation of this matter to determine the identity of the person liable for the possible violations. As a result of the investigation, the Commission found reason to believe that Christopher Kauffman violated 2 U.S.C. §§ 441d(a) and 434(b)(4)(H)(iii), (c)(1), and/or (g). However, after considering the circumstances of this matter, the Commission voted to take no further action as to Kauffman other than to issue a letter of caution. The Commission also found no reason to believe that Kauffman violated 2 U.S.C. §§ 432, 433, and 434. Accordingly, the Commission closed the file in this matter.

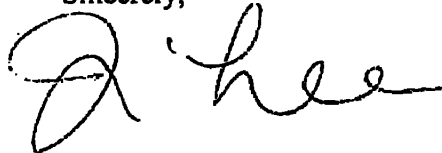
Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

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MUR 6642 (Christopher Kauffman)
Ken Martin

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

Sincerely,

A handwritten signature in cursive script, appearing to read "Jin Lee".

Jin Lee
Attorney

Enclosures

Factual and Legal Analysis for Unknown Respondents
Factual and Legal Analysis for Christopher Kauffman

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: UNKNOWN RESPONDENTS

MUR 6642

I. INTRODUCTION

The Complaint in this matter alleges that unknown respondents violated the Federal Election Campaign Act, as amended, (the "Act") by paying for a communication expressly advocating the defeat of Senator Amy Klobuchar without a proper disclaimer. The Complaint also alleges that the party responsible for the communication may have been required to file independent expenditure reports or to register as a political committee, depending on the amount of money spent on the communication.

Based on the available information, the Commission finds reason to believe that unknown respondents violated the Act by failing to include a disclaimer and failing to report an independent expenditure. *See* 2 U.S.C. §§ 434(b)(4)(H)(iii), (c)(1), (g), 441d(a).

II. FACTUAL BACKGROUND

The Complaint in this matter concerns a large billboard on Interstate 94, west of Albertville, Minnesota, which contained the slogan "FIRE KLOBUCHAR" with a disclaimer stating "NOT PAID FOR BY ANY CANDIDATE RUNNING FOR OFFICE." Compl., Ex. A. The Complaint contends that "KLOBUCHAR" refers to Senator Amy Klobuchar, who was a candidate for re-election to the United States Senate from Minnesota in 2012. According to the Complaint, the billboard expressly advocates the defeat of Klobuchar because there is only one way that a recipient of the message could "fire" Klobuchar — to vote against her in the general election. Compl. at 1-2.

1 The Complaint claims that because the billboard features the logo of Franklin Outdoor
2 Advertising ("Franklin"), Franklin likely leased the billboard to the unknown respondents.
3 Compl. at 1. According to Franklin's website, the company, located in Clearwater, Minnesota,
4 sells advertising space on billboards throughout Minnesota and Western Wisconsin. See
5 www.franklinoutdoor.com. Franklin's website provides no information regarding the pricing of
6 its billboard advertisements.

7 **III. LEGAL ANALYSIS**

8 **A. Failure to Include Proper Disclaimer**

9 The Act requires that any person who makes a disbursement for the purpose of financing
10 communications expressly advocating the election or defeat of a clearly identified candidate
11 must include a disclaimer on any such communication. 2 U.S.C. § 441d(a); *see also* 11 C.F.R.
12 § 110.11(a)(2). If the communication is not authorized by a candidate or an authorized
13 committee, the disclaimer must clearly state the name and permanent street address, telephone
14 number, or World Wide Web address of the person who paid for the communication and state
15 that the communication was not authorized by any candidate or candidate's committee. 2 U.S.C.
16 § 441d(a)(3); 11 C.F.R. § 110.11(b)(3).

17 Commission regulations likewise provide that "[a]ll public communications, as defined in
18 11 C.F.R. § 100.26 . . . that expressly advocate the election or defeat of a clearly identified
19 candidate" require disclaimers. 11 C.F.R. § 110.11(a)(2). Section 100.26 defines a public
20 communication to include "outdoor advertising facility" and "any other form of general public
21 political advertising." *Id.* § 100.26. A communication contains express advocacy when, among
22 other things, it uses phrases such as "vote against Old Hickory," "reject the incumbent," or uses

1 campaign slogans or individual words that in context can have no other reasonable meaning than
2 to urge the defeat of a clearly identified federal candidate. *Id.* § 100.22(a).

3 The disclaimer requirements of 2 U.S.C. § 441d(a) apply to the billboard here. The
4 billboard qualifies as a public communication because it is an outdoor advertising facility, as
5 well as a form of general public political advertising. The billboard contains express advocacy.
6 The phrase "FIRE KLOBUCHAR!" refers to Senator Klobuchar, who was a candidate for re-
7 election to the Senate.¹ To "fire" Senator Klobuchar is a call to vote against her and defeat her
8 candidacy.

9 Therefore, provided that no candidate authorized or paid for the billboard, the person who
10 paid for and disseminated the advertisement — whether an individual or potential committee —
11 should have included a disclaimer identifying who paid for the ad, and the person's address,
12 telephone number, or World Wide Web address. Accordingly, the Commission finds reason to
13 believe that unknown respondents violated 2 U.S.C. § 441d(a).

14 **B. Failure to Report Independent Expenditure**

15 Under the Act, unauthorized political committees, as well as other persons, must file
16 reports disclosing their independent expenditures. *See* 2 U.S.C. § 434(b)(4)(H)(iii) (requiring
17 non-connected political committees to report independent expenditures); *id.* § 434(c)(1)
18 (requiring every person, other than a political committee to report independent expenditures that
19 exceed \$250 during a calendar year). Depending on the amount and timing of the expenditures,
20 a person may have to file a 24- or 48-hour notice of independent expenditures. *See id.*
21 § 434(g)(1)(A) (requiring 24-hour notices for independent expenditures aggregating \$1,000 or
22 more after the 20th day, but more than 24 hours, before the date of an election); *id.*
23

¹ The Commission has found no information indicating that another person with the name "Klobuchar" was running for or holding public office in Minnesota as of August 2012.

1 § 434(g)(2)(A) (requiring 48-hour notices for independent expenditures aggregating \$10,000 or
2 more at any time up to and including the 20th day before the date of an election).

3 Here, the available information suggests that the billboard advertisement may have
4 constituted an independent expenditure because it expressly advocated the defeat of Senator
5 Klobuchar and contained a partial disclaimer stating that the advertisement was not paid for by
6 any candidate. If a political committee made the expenditure, it should have reported the
7 expenditure in reports filed with the Commission. If a person other than a committee made the
8 expenditure and the expenditure exceeded \$250, the person should have filed a report with the
9 Commission. Furthermore, based on the timing and amount spent on the billboard, the unknown
10 respondents may have been required to file a 24- or 48-hour notice of independent expenditure.
11 Accordingly, the Commission finds reason to believe that unknown respondents violated 2
12 U.S.C. § 434(b)(4)(H)(iii), (c)(1), and/or (g) by failing to report an independent expenditure.

1 **BEFORE THE FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT: CHRISTOPHER KAUFFMAN**

MUR 6642

5
6 **I. INTRODUCTION**

7 On June 25, 2013, based on the Complaint filed by the Minnesota Democratic Farmer
8 Labor Party, the Commission found reason to believe that Unknown Respondents violated the
9 disclaimer and independent reporting provisions of the Federal Election Campaign Act, as
10 amended, (the "Act") in connection with the billboard advertisement "FIRE KLOBUCHAR!,"
11 located on Interstate 94, West of Albertville, Minnesota.¹ See 2 U.S.C. §§ 441d(a);
12 434(b)(4)(H)(iii), (c)(1), (g). The Commission took no action at that time with respect to the
13 allegation that Unknown Respondents violated 2 U.S.C. §§ 432, 433, and 434 by failing to
14 register and report as a political committee.²

15 As a result of the investigation, the Commission determined that Christopher Kauffman
16 of Hanover, Minnesota, paid \$3,000 to produce and lease the space for the billboard
17 advertisement. Accordingly, the Commission substituted Christopher Kauffman's name in the
18 place of "Unknown Respondents" in the previous reason to believe findings.

19 Based upon the totality of the circumstances presented in this matter, the Commission
20 concludes that pursuing this matter further would not be an efficient use of the Commission's
21 resources, and thus, takes no further action as to Kauffman other than to issue a letter of caution.
22 Further, because Kauffman as an individual was not required to register and report as a political
23 committee, the Commission finds no reason to believe that Christopher Kauffman violated 2
24 U.S.C. §§ 432, 433, and 434.

¹ Certification, MUR 6642 (Unknown Respondents) (June 27, 2013).

² *Id.*

1 **II. SUMMARY OF INVESTIGATION**

2 The billboard advertisement at issue in this matter contained the slogan, "FIRE
3 KLOBUCHAR!" with a disclaimer that stated, "NOT PAID FOR BY ANY CANDIDATE
4 RUNNING FOR OFFICE."³ The billboard indicated that Franklin Outdoor Advertising
5 ("Franklin") leased the advertising space. Accordingly, Commission staff contacted Franklin to
6 determine the identity of the lessee, and Franklin indicated that Kauffman had paid for the
7 space.⁴ Kauffman subsequently confirmed that he was responsible for the advertisement,⁵

8 Kauffman resides in Hanover, Minnesota and owns his own business, K-Manufacturing.
9 In January 2013, Kauffman became Mayor of Hanover; he previously was a city councilman.

10 Documents produced by Franklin indicate that on August 1, 2012, Kauffman contacted
11 Chris Barta, a sales manager at Franklin, seeking to place a billboard advertisement in "a high
12 visibility spot" on Interstate 94 in the Albertville, Minnesota, area containing the message,
13 "FIRE KLOBUCHAR!"⁶ Kauffman explained that he contacted Franklin to make a simple
14 statement expressing his frustration with Senator Amy Klobuchar.⁷

15 On August 3, 2012, Barta sent Kauffman an invoice, attaching a proof for the slogan
16 "FIRE KLOBUCHAR!" and a disclaimer stating "NOT PAID FOR BY ANY CANDIDATE
17 RUNNING FOR OFFICE."⁸ On August 6, 2012, Kauffman and Franklin entered into a contract

³ Compl., Ex. A.

⁴ See Letter from James Braith, Franklin Outdoor Adver., to Jin Lee, FEC (Sept. 4, 2013) ("Braith Letter").

⁵ See Email from Christopher Kauffman to Jin Lee (Dec. 3, 2013) ("Kauffman Response").

⁶ Email from Christopher Kauffman to Chris Barta, Franklin Outdoor Adver. (Aug. 1, 2012).

⁷ Kauffman Response.

⁸ Franklin Outdoor Advertising Invoice (Aug. 3, 2012) ("August 3 Invoice").

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1 providing that Kauffman would pay Franklin \$3,000 in total — \$2,000 to lease Sign #418A and
2 \$1,000 to install and produce the advertisement.⁹

3 On August 10, 2012, Kauffman approved the proof attached to the August 3 Invoice and
4 authorized Franklin to proceed with producing and installing the advertisement,¹⁰ which Franklin
5 completed August 21, 2012.¹¹

6 In early September 2012, Franklin informed Kauffman that it had received a telephone
7 call complaining about the disclaimer in the advertisement, and Franklin agreed to revise the
8 disclaimer at no additional cost to Kauffman.¹² Kauffman asked his contact at Franklin if it
9 would be “acceptable to just put ‘paid for by C. Kauffman,’” explaining that he “googled this
10 and it doesn’t really id [sic] anyone in particular. Let me know what you think.”¹³

11 Subsequently, Franklin modified the advertisement’s disclaimer to: “PAID FOR BY C.
12 KAUFFMAN, 18351 TERRITORIAL RD. DAYTON, MN, AND NOT AUTHORIZED BY
13 ANY CANDIDATE OR CANDIDATE’S COMMITTEE.”¹⁴ That disclaimer remained in place
14 through the date of the election.

15 Kauffman was asked why he sought to include only the first initial of his first name in the
16 disclaimer. He stated that he was concerned about being identified and did not want to receive
17 “hate mail.” Kauffman further contends that he was unfamiliar with the legal requirements for
18 disclaimers on political advertisement until he read the previous Factual and Legal Analysis sent

⁹ See Braith Letter; Contract No. 12B080101 (Aug. 6, 2012). According to Franklin, the traffic count for Sign #418A is 73,126 vehicles per day. See <http://franklinoutdoor.com/sign.php?id=329>.

¹⁰ See Email from Chris Kauffman to Chris Barta (Aug. 10, 2012).

¹¹ See Email from Chris Kauffman to Chris Barta (Aug. 27, 2012).

¹² See Kauffman Response; Braith Letter.

¹³ Email from Chris Kauffman to Chris Barta (Sept. 4, 2012).

¹⁴ See Email from Franklin Outdoor (Sept. 24, 2012); Braith Letter; Proof.

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to him on November 12, 2013 ("First Factual and Legal Analysis"), and that he relied on Franklin to ensure that the disclaimer complied with relevant law.¹⁵

III. LEGAL ANALYSIS

A. The Amount in Violation Does Not Warrant Further Commission Action

As set forth in the Commission's First Factual and Legal Analysis, the disclaimer here did not satisfy the requirements of the Act and Commission regulations because it failed to identify the person who paid for the billboard advertisement.¹⁶ Kauffman's effort to remedy the alleged violation after receiving notice of the improper disclaimer was also inadequate, as he included only his first initial, not his full name.¹⁷ He further admits that he took this approach to avoid disclosure of his identity.

The information obtained during the investigation also reflects that Kauffman should have filed an independent expenditure report with the Commission under 2 U.S.C. § 434(c)(1), which requires every person to report independent expenditures that exceed \$250 during a calendar year.¹⁸

Nonetheless, the full cost of the advertisement at issue here was only \$3,000. Furthermore, this appears to have been an isolated incident by an individual inexperienced in making independent expenditures, acting in his individual capacity. Although Kauffman

¹⁵ See Kauffman Response (stating that Franklin agreed "to fix the sign" free of charge and that he "considered the issue fixed").

¹⁶ Any person who makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate must include a disclaimer on any such communication. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(2). If the communication is not authorized by a candidate or an authorized committee, the disclaimer must clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication and state that the communication was not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(b)(3).

¹⁷ 11 C.F.R. § 110.11(b)(3).

¹⁸ The Commission previously determined that Kauffman's advertisement expressly advocated the defeat of Senator Klobuchar. See First Factual and Legal Analysis at 4, MUR 6642. The advertisement therefore constituted an independent expenditure. 2 U.S.C. § 431(17).

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1 concedes that he sought to limit the likelihood that he would be identified through the disclaimer,
2 his correspondence with Franklin tends to corroborate his claim that he relied on Franklin's
3 experience with legal issues in advertising to determine whether using only his first initial in the
4 disclaimer "would [be] acceptable."¹⁹

5 Given the totality of the circumstances, the Commission has determined that further
6 enforcement proceedings would not be an efficient use of the Commission's resources, but
7 cautions Kauffman in light of the inadequacy of the remedial measures undertaken to comply
8 with the Act. Accordingly, the Commission takes no further action as to Christopher Kauffman
9 concerning the alleged violation of 2 U.S.C. § 441d(a) and 434(b)(4)(H)(iii), (c)(1), and/or (g),
10 other than to issue a letter of caution.²⁰

11 **B. Kauffman Need Not Register and Report as a Political Committee**

12 The Act and Commission regulations define a "political committee" as "any committee,
13 club, association or *other group of persons* which receives contributions aggregating in excess of
14 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
15 during a calendar year."²¹ In *Buckley v. Valeo*, the Supreme Court concluded that the term
16 "political committee" "need only encompass organizations that are under the control of a
17 candidate or the major purpose of which is the nomination or election of a candidate."²²

18 The Complaint alleges that if Unknown Respondents spent more than \$1,000 on the
19 billboard advertisement, then they may have triggered political committee status, requiring them
20

¹⁹ Email from Chris Kauffman to Chris Barta (Sept. 4, 2012); *see* Kaufmann Response.

²⁰ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

²¹ 2 U.S.C. § 431(4)(A); 11 C.F.R. § 100.5(a) (emphasis added).

²² 424 U.S. 1, 79 (1976).

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1 to register and report with the Commission.²³ Here, the investigation established that
2 Christopher Kauffman spent \$3,000 on the advertisement. Although the monetary threshold has
3 been satisfied, the evidence indicates that Kauffman was acting as one individual, not a “group
4 of persons,” as set forth in section 431(4)(A). When Kauffman first contacted Franklin about
5 leasing the advertising space at issue, he stated that “[t]his would be my personal deal.”²⁴ In
6 addition, the investigation did not uncover any information that Kauffman was working in
7 concert with any other individuals or groups — Franklin communicated with and billed only
8 Kauffman, and Kauffman confirmed that he used his own personal funds to pay for the
9 advertisement. Because the evidence establishes that Kauffman was acting alone in funding the
10 independent expenditure at issue, he does not meet the definition of political committee under
11 section 431(4)(A). The Commission therefore finds no reason to believe that Kauffman violated
12 2 U.S.C. §§ 432, 433, and 434, and closes the file.

²³ Compl. at 2.

²⁴ Email from Chris Kauffman to Chris Barta (Aug. 1, 2012).

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